

GEOFFREY S. BERMAN
United States Attorney for the
Southern District of New York
By: ANDREW E. KRAUSE
Assistant United States Attorney
86 Chambers Street, Third Floor
New York, New York 10007
Telephone: (212) 637-2769
Facsimile: (212) 637-2786
E-mail: andrew.krause@usdoj.gov

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE NEW YORK TIMES COMPANY and	:	
BENJAMIN PROTESS,	:	
	:	19 Civ. 540 (KPF)
Plaintiffs,	:	
	:	
-against-	:	ANSWER
	:	
DEPARTMENT OF TRANSPORTATION,	:	
	:	
Defendant.	:	
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Defendant United States Department of Transportation (“Defendant”), by its attorney, Geoffrey S. Berman, United States Attorney for the Southern District of New York, answers the complaint of plaintiffs The New York Times Company and Benjamin Protes (sic) (“Plaintiffs”), dated January 18, 2019, as follows:

1. Paragraph 1 consists of Plaintiffs’ characterization of this lawsuit, to which no response is required. To the extent a response is required, Defendant denies the allegations contained in paragraph 1 of the complaint, except admits that Plaintiffs seek relief pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552.
2. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the complaint.

3. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the complaint.

4. Defendant denies the allegations contained in paragraph 4 of the complaint, except admits that Defendant is an “agency” of the federal government within the meaning of 5 U.S.C. § 552(f).

5. The allegations contained in paragraph 5 of the complaint consist of Plaintiffs’ legal opinions and conclusions regarding jurisdiction, to which no response is required. To the extent a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the complaint.

6. The allegations contained in paragraph 6 of the complaint consist of Plaintiffs’ legal opinions and conclusions regarding venue, to which no response is required. To the extent a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the complaint.

7. The allegations contained in paragraph 7 of the complaint consist of Plaintiffs’ legal opinions and conclusions, to which no response is required. To the extent a response is required, Defendant denies the allegations contained in paragraph 7 of the complaint.

8. The allegations contained in paragraph 8 of the complaint consist of Plaintiffs’ characterization of the FOIA request at issue in this matter. Defendant admits that Plaintiffs submitted a FOIA request to Defendant on March 15, 2018, and admits that the two sections of quoted language are accurate quotations of portions of the March 15, 2018 FOIA request. Defendant respectfully refers the Court to the March 15, 2018 FOIA request for a complete description of its contents.

9. Defendant admits the allegations contained in paragraph 9 of the complaint.

10. Defendant admits the allegations contained in paragraph 10 of the complaint.

11. Defendant denies the allegations contained in paragraph 11 of the complaint, except admits that as of the date of this Answer, Defendant has not yet produced responsive, non-exempt records in response to Plaintiffs' March 15, 2018 FOIA request.

12. Defendant repeats and incorporates by reference each and every response set forth herein to the allegations contained in paragraphs 1 through 11 of the complaint.

13. The allegations contained in paragraph 13 of the complaint consist of Plaintiffs' legal opinions and conclusions, to which no response is required. To the extent a response is required, Defendant denies the allegations contained in paragraph 13 of the complaint, except admits that Defendant is subject to FOIA.

14. The allegations contained in paragraph 14 of the complaint consist of Plaintiffs' legal opinions and conclusions, to which no response is required. To the extent a response is required, Defendant denies the allegations contained in paragraph 14 of the complaint.

15. The allegations contained in paragraph 15 of the complaint consist of Plaintiffs' legal opinions and conclusions, to which no response is required. To the extent a response is required, Defendant denies the allegations contained in paragraph 15 of the complaint.

16. Paragraphs 16 through 19 of the complaint consist of Plaintiffs' request for relief, to which no response is required. To the extent a response is required, Defendant denies that Plaintiffs are entitled to the requested relief, or to any relief whatsoever.

DEFENSES

FIRST DEFENSE

The Court lacks subject matter jurisdiction over Plaintiffs' requests for relief that exceed the relief authorized by statute under FOIA, 5 U.S.C. § 552.

SECOND DEFENSE

The requested records are exempt, in full or in part, from disclosure. *See* 5 U.S.C. § 552(b).

THIRD DEFENSE

Defendant has exercised due diligence in processing the FOIA Request and exceptional circumstances exist that necessitate additional time for Defendant to complete its processing of the FOIA Request. *See* 5 U.S.C. § 552(a)(6)(C).

FOURTH DEFENSE

Defendant reserves the right to amend this answer to assert any other matter that constitutes an avoidance or affirmative defense under Rule 8(c) of the Federal Rules of Civil Procedure.

WHEREFORE, Defendant respectfully requests that the Court: (1) dismiss the complaint with prejudice; (2) enter judgment in favor of Defendant; and (3) grant such further relief as the Court deems just and proper.

Dated: New York, New York
March 6, 2019

Respectfully submitted,

GEOFFREY S. BERMAN
United States Attorney for the
Southern District of New York

By: /s/ Andrew E. Krause
ANDREW E. KRAUSE
Assistant United States Attorney
86 Chambers Street, Third Floor
New York, New York 10007
Telephone: (212) 637-2769
Facsimile: (212) 637-2786
E-mail: andrew.krause@usdoj.gov